

(3) EDA may enter into an agreement with the RLF Third Party to liquidate the assets of one (1) or more RLFs or RLF Recipients;

(4) EDA may allow the RLF Third Party to retain a portion of the RLF assets, consistent with the agreement referenced in paragraph (c)(3) of this section, as reasonable compensation for services rendered in the liquidation; and

(5) EDA may require additional reasonable terms and conditions.

(d) *Distribution of proceeds.* The proceeds resulting from any liquidation upon termination shall be distributed in the following order of priority:

(1) *First*, for any third party liquidation costs;

(2) *Second*, for the payment of EDA's Federal Share; and

(3) *Third*, if any proceeds remain, to the RLF Recipient.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62869, Oct. 22, 2008]

§ 307.21 Termination of Revolving Loan Funds.

(a)(1) EDA may suspend or terminate an RLF Grant for cause, including but not limited to the RLF Recipient's failure to:

(i) Operate the RLF in accordance with the Plan, the RLF Grant or this part;

(ii) Obtain prior EDA approval for material changes to the Plan, including provisions for administering the RLF;

(iii) Submit an updated Plan to EDA in accordance with § 307.9(c);

(iv) Submit timely progress, financial and audit reports in the format required by the RLF Grant and § 307.14, including the semi-annual report and the Income and Expense Statement (if applicable);

(v) Manage the RLF Grant in accordance with Prudent Lending Practices, as defined in § 307.8;

(vi) Sequester excess funds or remit the interest on EDA's portion of the sequestered funds to the U.S. Treasury, as directed by EDA;

(vii) Submit the documentation requested by EDA regarding a high loan default rate and collection efforts, or correct a high loan default rate, as determined by EDA;

(viii) Comply with the audit requirements set forth in OMB Circular A-133 and the related Compliance Supplement, including reference to the correctly valued EDA RLF federal expenditures in the Schedule of Expenditures of Federal Awards ("SEFA"), timely submission of audit reports to the Federal Audit Clearinghouse and the correct designation of the RLF as a "major program" (as that term is defined in OMB Circular A-133);

(ix) Comply with an EDA-approved corrective action plan to remedy RLF-related audit findings; and

(x) Comply with the conflicts of interest provisions set forth in § 302.17.

(2) To maintain effective control over and accountability of RLF Grant funds and assets, EDA shall determine the manner and timing of any suspension or termination action. EDA may require the RLF Recipient to repay the Federal Share in a lump-sum payment or enter into a Sale, or EDA may agree to enter into a repayment agreement with the RLF Recipient for repayment of the Federal Share.

(b) EDA may approve a request from an RLF Recipient to terminate an RLF Grant. The RLF Recipient must compensate the Federal government for the Federal Share of the RLF property, including the current value of all outstanding RLF loans. However, with EDA's prior approval, upon a showing of compelling circumstances, the RLF Recipient may retain and use for other economic development activities the RLF Recipient's share of RLF Income (or program income) generated by the RLF.

(c) Upon termination, distribution of proceeds shall occur in accordance with § 307.20(d).

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62869, Oct. 22, 2008; 75 FR 4265, Jan. 27, 2010]

§ 307.22 Variances.

EDA may approve variances to the requirements contained in this subpart, provided such variances:

(a) Are consistent with the goals of the Economic Adjustment Assistance program and with an RLF Plan;

(b) Are necessary and reasonable for the effective implementation of the RLF;

(c) Are economically and financially sound; and

(d) Do not conflict with any applicable legal requirements, including Federal, State and local law.

PART 308—PERFORMANCE INCENTIVES

Sec.

308.1 Use of funds in Projects constructed under projected cost.

308.2 Performance awards.

308.3 Planning performance awards.

AUTHORITY: 42 U.S.C. 3151; 42 U.S.C. 3154a; 42 U.S.C. 3154b; Department of Commerce Delegation Order 10–4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

§ 308.1 Use of funds in Projects constructed under projected cost.

(a) If the Assistant Secretary determines before closeout of a construction Project funded under parts 305 or 307 of this chapter that the cost of the Project, based on the designs and specifications that were the basis of the Investment Assistance, has decreased because of a decrease in costs, EDA may in its discretion approve the use of the excess funds (or a portion of the excess funds) by the Recipient to:

(1) Increase the Investment Rate of the Project to the maximum percentage allowable under § 301.4 of this chapter for which the Project was eligible at the time of the Investment award; or

(2) Further improve the Project consistent with its purpose.

(b) EDA, in its sole discretion, may use any amount of excess funds remaining after application of paragraph (a) of this section for other eligible Investments.

(c) In the case of Projects involving funds transferred from other Federal Agencies, EDA will consult with the transferring Agency regarding the use of any excess funds.

§ 308.2 Performance awards.

(a) A Recipient of Investment Assistance under parts 305 or 307 of this chapter may receive a performance award in connection with an Investment made on or after the date of enactment of section 215 of PWEDA in an amount

not to exceed ten (10) percent of the amount of the Investment award.

(b) To receive a performance award, a Recipient must demonstrate Project performance in one (1) or more of the areas listed in this paragraph, weighted at the discretion of the Assistant Secretary:

(1) Meet or exceed the Recipient's projection of jobs created;

(2) Meet or exceed the Recipient's projection of private sector capital invested;

(3) Meet or exceed target dates for Project start and completion stated at the time of Investment approval;

(4) Fulfill the application evaluation criteria set forth in § 301.8 of this chapter; or

(5) Demonstrate other unique Project performance characteristics as determined by the Assistant Secretary.

(c) A Recipient may receive a performance award no later than three (3) years following the Project's closeout.

(d) A performance award may fund up to one hundred (100) percent of the cost of an eligible Project or any other authorized activity under PWEDA. For the purpose of meeting the non-Federal share requirement of PWEDA or any other statute, the amount of a performance award shall be treated as non-Federal funds.

(e) The applicable FFO will set forth the requirements, qualifications, guidelines and procedures for performance awards to be made during the applicable fiscal year, with all performance awards being subject to the availability of funds.

[71 FR 56675, Sept. 27, 2006, as amended at 75 FR 4265, Jan. 27, 2010]

§ 308.3 Planning performance awards.

(a) A Recipient of Investment Assistance awarded on or after the date of enactment of section 216 of PWEDA for a Project located in an EDA-funded Economic Development District may, at the discretion of the Assistant Secretary, receive a planning performance award in an amount not to exceed five (5) percent of the amount of the applicable Investment award if EDA determines before closeout of the Project that:

(1) The Recipient, through the Project, actively participated in the